

In the Matter of **KIMBERLY-CLARK CORPORATION** and **INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, A. F. L.**, and **INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, A. F. L.**

Case No. 3-R-885.—Decided November 27, 1944

Messrs. S. N. Moe and M. H. Kettenhofen, of Neenah, Wis., for the Company.

Mr. J. Griffin McKiernan, of Albany, N. Y., and *Mr. W. J. Cunningham*, of Buffalo, N. Y., for the A. F. L.

Mr. Stanley Kulak, of Niagara Falls, N. Y., for the Independent.

Mr. Rinaldo Cappellini, of Niagara Falls, N. Y., for District 50.

Mr. Jack Mantel, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a joint petition duly filed by International Brotherhood of Paper Makers, and International Brotherhood of Pulp, Sulphite and Paper Mill Workers, both affiliated with the American Federation of Labor, herein jointly called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of Kimberly-Clark Corporation, Niagara Falls, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Niagara Falls, New York, on November 2, 1944. The Company, the A. F. L., Paper Mill & Sulphite Specialties Workers' Union, herein called the Independent, and District 50, United Mine Workers of America, herein called District 50, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing, the Trial Examiner reserved ruling upon the Company and Independent's motions to dismiss the petition, on the grounds, (1) that their contract is a bar to a present determination of representatives, and (2) that the A. F. L. had not made a sufficient showing of interest in the proceeding. For reasons hereinafter stated, we hereby deny the respective motions to

dismiss. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Kimberly-Clark Corporation, a Delaware corporation, is engaged at its plant in Niagara Falls, New York in the manufacture of paper and paper specialties. During the month of September 1944, the Company used at its Niagara Falls plant raw materials valued in excess of \$717,242, of which in excess of 93 percent represents shipments made to the Company's plant at Niagara Falls from points outside the State of New York. During the same period, the Company manufactured finished products valued in excess of \$1,250,299, of which more than 92 percent represents shipments to points outside the State of New York.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Paper Makers, and International Brotherhood of Pulp, Sulphite and Paper Mill Workers, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

Paper Mills & Sulphite Specialties Workers' Union, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On October 6, 1943, the Company and the Independent entered into a closed-shop contract for a 1-year period. In September 1944, negotiations for a new contract were held, culminating in the execution of a new closed-shop contract on October 2, 1944. The A. F. L., on September 18, 1944, requested the company to refrain from renewing its contract with the Independent. At a meeting held on September 21, 1944, between the Company and the A. F. L. the Company stated that it would not recognize the A. F. L. as bargaining agent for its employees, until the representation question was determined by the Board. Thereafter, on September 28, 1944, the A. F. L. filed its petition herein. The Company and the Independent contend in support of their motions to dismiss the petition, that the

new contract of October 2, 1944, constitutes a bar to this proceeding.

Since the Company had notice of the A. F. L.'s representation claim and request for recognition prior to the date on which the contract of October 2, 1944, was executed, we find that said contract with the Independent cannot operate as a bar to an immediate determination of representatives.¹

A statement of a Board agent, introduced into evidence at the hearing, indicates that the A. F. L. represents a substantial number of employees in the unit hereinafter found to be appropriate.²

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The parties are in general agreement that all hourly paid production and maintenance employees at the Company's No. 1 and No. 2 plants, excluding office, clerical, and all supervisory employees constitute an appropriate bargaining unit. They are in dispute, however, concerning tour foremen, whom the Company, District 50, and the Independent would exclude from the unit and the A. F. L. would include.

The record discloses that tour foremen are paid on a salary basis and spend practically all of their time in supervising other employees. They perform no manual work, except in emergency situations, which consumes approximately 3 percent of their time. Tour foremen have the authority effectively to recommend the hire and discharge of employees, and are consulted on promotions and transfers. We find that tour foremen are supervisory employees within our customary definition, and we shall therefore exclude them from the unit.³

We find that all hourly paid production and maintenance employees at the Company's No. 1 and No. 2 plants at Niagara Falls, New York,

¹ See *Matter of Kimberly-Clark Corporation*, 54 N. L. R. B. 601.

² The Board agent reported that the A. F. L. submitted 268 authorization cards; that the names of 213 persons appearing on the cards were listed on the Company's pay roll of September 31, 1944; that 87 of the cards were dated between October 1943 and September 1944, 118 being dated October 1944; and that 8 were undated. The pay roll contained the names of approximately 1,000 employees in the appropriate unit. The Company and the Independent moved to dismiss the petition on the ground that the A. F. L.'s interest was insufficient. However, in view of the series of closed-shop contracts between the Company and the Independent since September 1941, we are of the opinion that the A. F. L. has submitted a sufficient showing of membership to warrant the holding of an election in the unit herein found appropriate. See *Matter of Chicago Molded Products Corporation*, 49 N. L. R. B. 756 see footnote 1, *supra*.

The Board agent further reported that District 50 submitted 137 authorization cards, and that the names of 117 persons appearing on the cards were listed on the aforesaid pay roll. Although this showing is insubstantial, since we are directing an election, we shall follow our usual practice and accord District 50 a place on the ballot. The Independent relies on its contract for its interest in the proceeding.

³ See *Matter of Kimberly Clark Corporation*, 54 N. L. R. B. 601, and 55 N. L. R. B. 521.

excluding tour foremen, office and clerical employees, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Kimberly-Clark Corporation, Niagara Falls, New York an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Third Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during the said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by International Brotherhood of Paper Makers and International Brotherhood of Pulp, Sulphite and Paper Mill Workers, jointly, affiliated with the American Federation of Labor, by District 50, United Mine Workers of America, or by Paper Mill & Sulphite Specialties Workers' Union, for the purposes of collective bargaining, or by none of these organizations.